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May 10, 2024

VIA ECF

Hon. Analisa Torres
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Guo et al., Case No. 1:23-cr-00118 (AT)

Dear Judge Torres:

Pursuant to the Court's Order dated April 10, 2024 (Dkt. No. 275), we write on behalf of Miles Guo to advise the Court that Mr. Guo does not intend to assert an advice-of-counsel defense.

Mr. Guo does, however, reserve the right to present evidence or testimony regarding his awareness that legal counsel was involved in certain transactions. This evidence bears directly on Mr. Guo's good faith and lack of fraudulent intent. *See, e.g., SEC v. Present*, No. 14 Civ. 14692 (LTS), 2017 U.S. Dist. LEXIS 120351, at *2-3 (D. Mass. July 31, 2017) (although not asserting formal advice-of-counsel defense, defendant may offer evidence that he engaged counsel "to ensure compliance with legal requirements"). Of particular relevance, a defendant may introduce such evidence even where the defendant did not directly solicit counsel's involvement or interact with counsel. *See Howard v. SEC*, 376 F.3d 1136, 1148 (D.C. Cir. 2004) (rejecting SEC argument that defendant failed to assert formal advice-of-counsel defense and holding that defendant's reliance on representations from other officer that transactions at issue were reviewed by counsel negated inference of fraudulent intent).

Accordingly, Mr. Guo is entitled to present evidence to the jury that he was aware that lawyers were involved in various transactions without asserting a formal advice-of-counsel defense. *See Howard*, 376 F.3d at 1148; *Present*, 2017 U.S. Dist. LEXIS 120351, at *2-3. An example of Mr. Guo's awareness of the involvement of counsel is annexed as **Exhibit A**, p.6.¹

¹ Mr. Guo is transmitting Exhibit A to the Court *ex parte*.



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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. Shroff", written over a horizontal line.

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cc: Counsel of Record